

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 5th day of June, 1998

BEFORE

THE HON'BLE MR. JUSTICE V.P. MOHAN KUMAR

WRIT PETITION NO. 23308 OF 1996

BETWEEN :

1. The Chief Secretary,
Zilla Parishad
(Now called as
THE CHIEF EXECUTIVE OFFICER,
Zilla Panchayat),
Bijapur District,
Bijapur
2. The Assistant Director of
Social Welfare,
Bijapur District,
Bijapur

.. PETITIONERS

(Sri B.S. Patil, Advocate
for petitioners)

A N D :

1. Smt. Shalini,
W/o William Kisti,
C/o Sri V.G. Kulkarni,
Advocate, Bijapur District,
Bijapur
2. The Presiding Officer,
Labour Court, Bijapur

.. RESPONDENTS

(Sri R.B. Annappanavar for R - 1
Sri T.P. Nambiar, A.G.A. for R - 2)

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Writ Petition filed under Article 226 of the Constitution of India, praying to; issue any writ, order or direction in the nature of a writ of certiorari or any other appropriate writ and set aside the order dated 28-7-1995 passed by the Labour Court, Bijapur in I. D. No. 454 of 95 which is produced as Annexure - 'A' alongwith the writ petition, etc.

This Writ Petition coming on for Hearing, this day, the Court made the following :

O_R_D_E_R

The award passed by the Labour Court in a dispute raised by the 1st respondent - worker is challenged in these proceedings. The 1st respondent was appointed as a worker in the Integrated Child Development Service Scheme, which is called I.C.D.S. Scheme, formulated by the petitioners herein. It is alleged that the worker was not discharging her duties properly and that there were certain allegations against her. The petitioners conceded that they had transferred her from one place to another so as to

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to avoid such complaints. As she did not improve, an enquiry was conducted and her services were terminated. It was declared that the services offered by her is no more required. On that basis, the worker was discharged from service. She raised a dispute alleging that it is a retrenchment that there was no enquiry conducted and that there was no compliance of the requirement of law. The Labour Court framed necessary issues. In the first place, it held that there was no domestic enquiry conducted before her services were terminated. It then held that the termination amounted to retrenchment and, therefore, as the requirement of the provisions of the I.D. Act has not been complied with by the petitioners, the termination is illegal. Hence, it declared that the 1st respondent worker is entitled for reinstatement with 50% backwages. This award has been challenged by the petitioners in these proceedings.

2. When the matter came up for preliminary hearing, this Court ordered that the worker shall be reinstated

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(AIR 1978 SC 548). If that is so, the question would be, whether the petitioners are justified in terminating the services of the 1st respondent. It is not in dispute that a proper enquiry was not conducted. The termination was not in accordance with the requirement of law. There is no proof that the charges levelled against the worker are proved and it is not established that the termination was after complying with the requirements of the provisions of the I.D. Act. In such circumstances, the termination is bad and the worker is entitled to be reinstated.

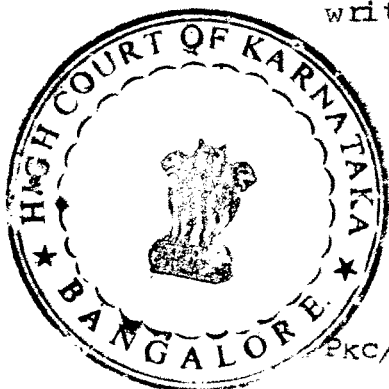
4. The argument that there is no master and servant relationship between the petitioner and the 1st respondent and that the worker was offering voluntary services has to fail. It is admitted that the worker had been transferred from one place to another. If the worker has no right, there is no question of she being transferred from one place to another, and that the employer has exercised his right as a master to transfer her. Secondly, an enquiry had been conducted

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conducted against the working of the 1st respondent. If the 1st respondent was not an employee, there is no question of the petitioners conducting an enquiry also. All these circumstances show that the petitioner has exercised his right as an employer over the 1st respondent worker. If that be the position, the contention that there is no master and servant relationship between the petitioner and the 1st respondent cannot be accepted, and has to fail.

5. The question then would be, what would be the relief to be granted. The worker has not been reinstated so far despite the order passed by this Court. It is a clear case of the violation of the order issued by this Court. In such circumstances, the petitioners cannot be granted any relief in this petition. While affirming the award passed by the Labour Court, I hold that the worker is entitled to 50% backwages as awarded. The writ petition is disposed of as above.



Pkc/Hrp

Sd/-
JUDGE